

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JASON MCLEAN and )  
BRIAN COLEMAN, )  
                      )  
Plaintiffs,        )  
                      )  
v.                   ) Civ. No.: 06-617-SLR  
                      )  
COMMUNICATIONS     )  
CONSTRUCTION GROUP, LLC., )  
                      )  
Defendant.         )

**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

**YOUNG, MALMBERG & HOWARD, P.A.**

/s/ Ronald G. Poliquin  
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Dover, DE 19901  
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*Attorney for Plaintiffs*

DATED: December 28, 2007

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**NATURE AND STAGE OF PROCEEDINGS**

Brian Coleman and Jason McLean (“plaintiffs”) commenced this Title VII action on October 2, 2006 contending that they were the subject of racial harassment and retaliation. Defendant Communications Construction Group, LLC (“defendant CCG”) answered the complaint on October 24, 2006. On November 28, 2007, both plaintiffs and defendant filed motions for summary judgment. This is plaintiffs’ reply brief in support of plaintiffs’ motion for partial summary judgment.

**SUMMARY OF THE ARGUMENT**

- I. The racial slur disclosed the intent of Dodson's prior actions contributing to the hostile work environment.
- II. There is substantial evidence demonstrating temporal proximity of defendant's acts and retaliatory animus against plaintiffs.
- III. Bradley Dodson was a supervisor of plaintiffs whose harassment led to plaintiffs' transfer and termination.

**STATEMENT OF FACTS**

Plaintiffs reiterate the statement of facts previously stated in plaintiffs' briefs. In addition, plaintiffs assert the following facts:

McLean and Dodson were punished for reporting Brad Dodson's comment. Two uninterested employees confirmed that Brad Dodson called the plaintiffs' "two dumb niggers". (Investigator Notes attached as Exhibit A) Dodson only received a warning for his actions. (Employee Warning Report attached as Exhibit B). Dodson had previous problems with the company. During Dodson's employment with defendant CCG, he was terminated for crashing a truck into a trailer and "back talking" to a supervisor (1-18-90 Employee Warning Report attached as Exhibit C). Another time, Dodson failed to give two weeks notice before quitting employment with CCG. (Record of Separation attached as Exhibit D) Brad Dodson had a history of problems during his employment at CCG. (Brad Dodson Employment File Notes attached as Exhibit E) Alternatively, Coleman and McLean were also given warnings concerning the incident for not following company policy and leaving the job site. (Employee Warning Reports attached as Exhibit F)

Bradley Dodson's actions led to his arrest and subsequent plea agreement (5-31-05 Police Report attached as Exhibit G). Because of the nature of Brad Dodson's crime, the police contemplated charging Brad Dodson with a hate crime.

## ARGUMENT

### **I. Plaintiffs have established a prima facie case for racial discrimination**

“In order to establish a claim for employment discrimination due to an intimidating or offensive work environment, a plaintiff must establish, by the totality of the circumstances, the existence of a hostile or abusive environment which is severe enough to affect the psychological stability of a minority employee. Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1081 (3d Cir.1996) (internal citations omitted). To establish the existence of such an environment, Plaintiff must show: “(1) that he or she suffered intentional discrimination because of race; (2) the discrimination was pervasive or regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same race in that position; and (5) the existence of respondeat superior liability.” Id. (internal citations omitted).

The Supreme Court has stated that “whether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

Words of a supervisor can reveal the intent of the speaker’s actions. See Aman. Title VII requires that employers prevent racist views from affecting work environment either by influencing employment decisions or creating a hostile work environment; this is true no matter what form discrimination takes—overt, subtle or otherwise. Civil Rights

Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq. *Id.* In Aman, the Court stated that words are relevant to reveal the intent of the speaker.

Retaliatory harassment can be considered for a claim under Title VII. Jensen v. Potter, 435 F.3d 444 (P.A.) 2006). In Jensen, the Court declared that “retaliatory harassment” which is severe and pervasive enough to create a hostile work environment is cognizable under Title VII.

In determining whether conduct was retaliatory, cases have tended to focus on two factors: (1) the “temporal proximity” between the protected activity and the alleged discrimination and (2) the existence of “ ‘a pattern of antagonism in the intervening period.’ ” Woodson v. Scott Paper Co., 109 F.3d 913, 920-21 (3d Cir.1997). Timing alone raises the requisite inference when it is “unusually suggestive of retaliatory motive,” but even if “temporal proximity ... is missing, courts may look to the intervening period for other evidence of retaliatory animus.” Krouse v. American Sterilizer Co., 126 F.3d 494, 503-04 (3d Cir.1997). Despite this focus, “[t]hese are not the exclusive ways to show causation, as the proffered evidence, looked at as a whole, may suffice to raise the inference.” Kachmar v. SunGard Data Systems, Inc., 109 F.3d 173, 178 (3d Cir.1997) (“The element of causation, which necessarily involves an inquiry into the motives of an employer, is highly context-specific.”).

It is improper to isolate incidents of facially neutral harassment and conclude, one by one, that each lacks the required discriminatory animus. See Aman, 85 F.3d at 1081-84. Because “it is often difficult to determine the motivations of an action[,] .... [the] discrimination analysis must concentrate not on individual incidents, but on the overall scenario.”Id.

The racial slur disclosed the intent of Dodson's prior actions. Defendant minimizes the harassment suffered by plaintiffs as "one isolated incident". However, plaintiffs endured harassment prior to Bradley Dodson's racial epithet. Prior to the incident, Bradley Dodson signaled the plaintiffs out by calling them "yahoos" when criticizing their work. He reminded plaintiffs on a daily basis that he had the power to fire them. A reasonable jury could conclude that Bradley Dodson's prior hostility toward plaintiffs was race-based. Dodson's later comments to co-workers that plaintiffs were "two dumb niggers" demonstrate the intent of his prior actions.

The Court should not isolate the incident involving Brad Dodson telling co-workers that they were "two dumb niggers" from the defendant's subsequent acts. Dodson's racial slur served as the catalyst for further retaliatory discrimination against the plaintiffs. Certainly, Dodson's physical confrontation with the plaintiffs constitutes retaliatory harassment as it was in direct response to their inquiry of his statement. When plaintiffs inquired as to whether or not Dodson in fact said the racial epithet, he physically attacked McLean by repeatedly poking him in the chest. This led to Dodson's arrest and subsequent plea agreement. In addition, the Court should consider the harassment suffered by plaintiffs as physically threatening.

There is substantial evidence of temporal proximity and retaliatory animus against plaintiffs. CEO Jonathan Gates was aware of plaintiffs' complaints concerning harassment. Despite five years of employment, Gates made vague threats as to Coleman's future with the company. Prior to this incident, Coleman had no negative reviews in his file with CCG.

In addition, Brad Dodson's brother, David Dodson was involved in the decisions relating to plaintiff. Brad Dodson continually noted his lineage throughout his harassment of the plaintiffs. Thus acts by the defendant can be inferred as retaliatory harassment committed against plaintiffs. These acts constitute discrimination as they unreasonably interfered with plaintiffs' work performance. Immediately after reporting the incident, McLean was relegated to sweeping sidewalks and cleaning dirt out of people's yards. The position paid McLean half as much as his former position. When Coleman and McLean were transferred to West Chester. their rate schedule was inferior and they were forced to work more days to make the same pay. Also, Coleman and McLean were initially allowed a truck to travel to their new worksite. However; CCG's CEO Jonathan Gates quickly took the truck away. All other foremen had company trucks.

Dodson's statement was of particular severity and humiliation. "Nigger" is a word so fraught with an infamous history of racial animus and abuse as to be unacceptable in civilized discourse, including discourse in the work place. See Aman, 85 F.3d at 1081. The statement was made to plaintiffs' co-workers in direct reference to plaintiffs' work performance.

Secondly, Dodson's statement was followed up with physically threatening behavior. The incident included more than just a verbal altercation. Upon confronting Brad Dodson about the incident, Dodson immediately starts striking Coleman in the chest with his finger.

The discrimination interfered with the plaintiffs' work performance. The work in West Chester was inferior to the New Castle worksite. The transfer resulted in a substantial loss of salary. Plaintiffs were making less money for the same work in West

Chester. The transfer also resulted in longer hours, higher costs for room and board, and higher food costs. Plaintiffs worked four-day weeks in New Castle and six-day weeks in West Chester. McLean requested an explanation from HR concerning his transfer, but was never given one. The travel time was also much longer for both McLean and Coleman at West Chester.

There was a substantial disparity in how the defendant treated plaintiffs and how they treated Bradley Dodson after the incident. This both shows affirmative discrimination and defendant's racial animus for their decisions. Two uninterested employees confirmed that Brad Dodson called the plaintiffs' two dumb niggers. (Exhibit A) However, McLean and Dodson were punished for reporting Brad Dodson's comment. (Exhibit F). Dodson only received a warning for his actions. (Employee Warning Report attached as Exhibit B). While Dodson was unaffected, plaintiffs were transferred and later terminated after the incident.

Dodson has a history of problems with the company. He was previously terminated for crashing a truck into a trailer and "back talking" to a supervisor (Exhibit C). Brad Dodson had a history of problems during his employment at CCG. (Exhibit E) Alternatively, Coleman and McLean had no such problems. Coleman worked five straight years with the company without problems. Yet, Dodson was still with the company after plaintiffs were terminated.

### **III. CCG should be held strictly liable for a foreman's harassment**

An employer is strictly liable for harassment by a supervisor that culminates in a tangible employment action (e.g., discharge, demotion or undesirable job reassignment). Faragher v. City of Boca Raton, 524 U.S. 775 (1998), and Burlington Industries, Inc. v.

Ellerth, 524 U.S. 742 (1998). If the harasser is a supervisor “with immediate (or successively higher) authority over the harassment victim,” then, subject to the employer’s affirmative defense, the plaintiff “needs to satisfy only the first four of the elements listed above.” Celestine v. Petroleos de Venezuela, 266 F.3d 343, 353 (5th Cir. 2001).

Here, Brad Dodson had control over plaintiffs’ job even helping determine their pay rate. Bradley Dodson was a foreman with CCG. A foreman is a boss of a crew who supervises anywhere from four to six employees. Bradley Dodson was the plaintiffs’ direct boss. Coleman and McLean were the only members of his crew. A foreman would be given work by a project supervisor and decide how to go about doing the work. A foreman would give feedback to the project supervisor concerning members of his crew. A foreman’s input was sought for evaluations of crewmembers that affected pay rates.

In addition, both Dodson and plaintiffs received the same punishment after the incident- written warnings. However, the plaintiffs were transferred to inferior working conditions and then subsequently terminated. While plaintiffs suffered this tangible work decision, Brad Dodson continued to be employed by the company.

**CONCLUSION**

The Court should grant plaintiffs' motion for partial summary judgment as to defendant's discrimination and their liability for the actions of Brad Dodson.

Respectfully submitted,

/s/ Ronald G. Poliquin  
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Dover, DE 19901  
302-672-5600  
*Attorney for Plaintiffs*

Dated: December 28, 2007

## **EXHIBIT A**

May 27<sup>th</sup>, 2005 (Friday)

Conversation between Bob Koch, Joseph Tatsch, & Brad Dodson

Bob Koch's statement:

- Bob and Brad parked the equipment, Bob said, "see you later."
- Brad then said, "must be nice, you don't have to work with two dumb niggers."

Brad Dodson's statement:

- Brad was having a conversation with Bob and they were discussing lawnmowers.
- Brad denies making any such comment.

Joseph Tatsch's statement:

- While walking by Brad and Bob, overheard them talking.
- He heard Brad say to Bob, "...dumb fucking niggers."
- Joseph kept walking and went back to work.

## **EXHIBIT B**

# Communications Construction Group, LLC.

## Employee Warning Report

Employee's Name Brad Dodson Date of Warning 6/20/05 Job # 5007

### Type of Violation

- |   |   |                                       |   |
|---|---|---------------------------------------|---|
| <input type="checkbox"/> Attendance           | <input type="checkbox"/> Safety Violation               | <input type="checkbox"/> Work Quality | <input checked="" type="checkbox"/> Insubordination |
| <input type="checkbox"/> Lateness/Leave Early | <input checked="" type="checkbox"/> Violation of Policy | <input type="checkbox"/> Other        |   |

### Warning Information

Violation Date 5/31/05 Violation Time Mid-Day Location of Violation New Castle, DE

Company Explanation of Incident	Employee Statement
An allegation was made that Brad used a racially derogatory remark. Brad denies making the statement he was accused of making. Additionally, during a heated conversation with Brian Coleman, Brad used physical contact in an inappropriate manner.	<input checked="" type="checkbox"/> I agree with the company's statement  <input type="checkbox"/> I disagree with the company's statement; <u>Explanation</u>

★If necessary, use the back of the form to complete your explanation ★

### Action Taken As Result Of Warning

Brad violated CCG's Harassment policy by engaging in inappropriate physical contact with an employee. To the extent any statement Brad made was either racially derogatory or racially insensitive, that would constitute a further violation of CCG Policy. A copy of CCG's Harassment Policy is being reissued. If he should violate any CCG policy again, he will be subject to further discipline, up to and including termination.

### MUST BE COMPLETED

I have read and understand this warning and decision, and have had the opportunity to express my viewpoint.

Employee's Signature: Brad Dodson

Date: 6/21/05

Signature of Person Preparing Warning: Lisa Clements

Date: 6/17/05

Supervisor's Signature (if different):

John Atay

Date: 6-21-05

## **EXHIBIT C**

COM MUNICATIONS CONSTRUCTION GROUP, INC.

DEPOSITION  
EXHIBITDODSON -4  
CMV-9/14/07

## EMPLOYEE WARNING REPORT

Employee's Name Brad Dockson Date of Warning 1-18-90 JOB #: 199 E

Type of Violation

<input type="checkbox"/> Attendance	<input checked="" type="checkbox"/> Carelessness	<input checked="" type="checkbox"/> Disobedience
<input type="checkbox"/> Safety	<input type="checkbox"/> Tardiness	<input type="checkbox"/> Work Quality
<input type="checkbox"/> Other		

W A R N I N G

Violation: Date 1/18/90

Violation: Time 5:45 A.M.

Place Violation Occurred 103

## Company Statement

BRAD, CRASHED TK#220  
INTO TRAILER ON TK#249  
TWICE IN 3 MINUTES. IS  
NOT FOLLOWING FOREMAN'S INSTRUCTIONS  
& BACK TALKING TO BURT HUNTER  
& DON BEICHNER.

## Employee Statement

Check Proper Box

- I concur with the Company's statement.  
 I disagree with the Company's statement for the following reasons:

I have entered my statement of the above matter

Employee's Signature \_\_\_\_\_ Date \_\_\_\_\_

## Warning Decision

TERMINATED

Approved By \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

List All Previous Warnings Below  
When Warned And By WhomPrevious Warning: 1st Warning  
Date \_\_\_\_\_Verbal \_\_\_\_\_  
Written \_\_\_\_\_Previous Warning: 2nd Warning  
Date \_\_\_\_\_Verbal \_\_\_\_\_  
Written \_\_\_\_\_Previous Warning: 3rd Warning  
Date \_\_\_\_\_

Verbal \_\_\_\_\_

I have read this "warning decision" and understand it.

Employee's Signature Patricia L. Lewis Date 1/18/90  
 Signature of person who prepared warning John R. Lewis Title Supervisor Date 1/18/90  
 Supervisor's Signature John R. Lewis Date 1/18/90 D0516

## Copy Distribution

Employee  
 Personnel Dept

Supervisor

Foreman  
 Union Rep

## **EXHIBIT D**

## COMMUNICATIONS CONSTRUCTION GROUP, INC.

## RECORD OF EMPLOYMENT SEPARATION

H1525 JOB # 143

Employee's Name: BRAD DOLSON SS# \_\_\_\_\_Hire Date: \_\_\_\_\_ Actual Last Day Worked: 8-5-98*"CK" 8/13/98 Onadek*REASON FOR SEPARATIONDischarge

- / Under the influence of drugs/intoxicants
- / Not Qualified
- / Allowed to Resign in lieu of discharge
- / Violation of rule
- / Tardiness
- / Absenteeism
- / Insubordination
- / Other

Voluntary Resignation

- / To Attend School
- / Medical
- Dissatisfied with job
- / To Leave Area
- / Personal or Domestic
- / Other Employment
- / Pregnancy
- / Absent 3 consecutive days (job abandonment)
- / Other
- / Job Relocation Refused
- / Lack of Work - Recall Date \_\_\_\_\_
- / Leave of Absence - Start Date \_\_\_\_\_ Return Date \_\_\_\_\_

/ If you prefer not to challenge this claimant's eligibility to receive benefits now, or in the future, please check box

Final Incident: GAVE ONE WEEK'S NOTICE  
MUST CONTACT RICK FICKES BEFORE REHIRE

Specific Details (Attach all related documents - warnings, resignations, medical forms, etc.)  
\_\_\_\_\_

List all payments employee will receive upon separation:  
Severance \_\_\_\_\_ Holiday Pay \_\_\_\_\_ Vacation \_\_\_\_\_

Employees Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature: Malcolm Meador Date: 8-6-98

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **EXHIBIT E**

Warning 1/18/90 Carelessness terminated  
transfer 1/19/90 insubordination  
termination 10/12/90 absent 3 consecutive days  
termination 8/15/98 dissatisfied w/ job  
general liability claim 8/29/00  
auto damage claim 5/7/01  
Warning 5/7/01 Safety violation  
general liability claim 1/14/02  
auto damage claim 5/15/03

## **EXHIBIT F**

# Communications Construction Group, LLC.

## Employee Warning Report

Employee's Name Jason McLeanDate of Warning 6/20/05Job # 5007**Type of Violation**

- Attendance       Safety Violation       Work Quality       Insubordination  
 Lateness/Leave Early       Violation of Policy       Other \_\_\_\_\_

**Warning Information**

Violation Date 5/31/05      Violation Time Mid-Day      Location of Violation New Castle, DE

Company Explanation of Incident	Employee Statement
<p>Jason was involved in a conversation with Brian Coleman and Bob Koch during which he claims to have been told by Bob Koch that a racially derogative comment about Jason McLean and Brian Coleman was made by Brad Dodson. Rather than following company procedure and reporting the issue to the Project Supervisor and/or HR, Jason left his job site during work hours and approached Brad Dodson to confront him about the comment.</p>	<p><input type="checkbox"/> I agree with the company's statement</p> <p><input checked="" type="checkbox"/> I disagree with the company's statement; <u>Explanation</u> <i>I never left my job site. We all were working in the same area.</i></p>

\*If necessary, use the back of the form to complete your explanation \*

**Action Taken As Result Of Warning**

Jason violated CCG's Harassment Policy by not following the Complaint Procedures. He also violated Company policy by leaving his job site during work hours. A copy of the Company's Harassment Policy and Complaint Procedures are being reissued. If this type of violation occurs again, Jason will be subject to further disciplinary action.

**MUST BE COMPLETED**

I have read and understand this warning and decision, and have had the opportunity to express my viewpoint.

Employee's Signature: Jason McLean

Date: 6-21-05

Signature of Person Preparing Warning: Lisa Clements

Date: 6-17-05

Supervisor's Signature (if different): John Doty

Date: 6-21-05

# Communications Construction Group, LLC.

## Employee Warning Report

Employee's Name Brian ColemanDate of Warning 6/20/05Job # 5007**Type of Violation**

- Attendance       Safety Violation       Work Quality       Insubordination  
 Lateness/Leave Early       Violation of Policy       Other

**Warning Information**Violation Date 5/31/05Violation Time Mid-DayLocation of Violation New Castle, DE

Company Explanation of Incident	Employee Statement
<p>Brian was told by Bob Koch that Brad Dodson had made a racially derogative remark and it was directed towards Jason McLean and Brian Coleman. Upon hearing this, rather than following company policy and raising the issue with the Project Supervisor and/or HR, Brian left his job site and confronted Brad to question him about the comment.</p> <p>While doing so, Brian waved his finger at Brad's face in a menacing manner.</p>	<p><input type="checkbox"/> I agree with the company's statement</p> <p><input type="checkbox"/> I disagree with the company's statement; <u>Explanation</u></p>

\*If necessary, use the back of the form to complete your explanation \*

**Action Taken As Result Of Warning**

Brian violated CCG's Harassment Policy by not following the Complaint Procedure and by engaging in inappropriate physical interaction with another employee. A copy of CCG's Harassment Policy and Complaint Procedure are being reissued. Brian also violated CCG's policy by leaving his job site during working hours. If this type of violation occurs again, Brian will be subject to further discipline, up to and including termination.

**MUST BE COMPLETED**

I have read and understand this warning and decision, and have had the opportunity to express my viewpoint.

Employee's Signature: Brian ColemanDate: 6/21/05Signature of Person Preparing Warning: Susan ClementsDate: 6/17/05Supervisor's Signature (if different): John MillerDate: 6-21-05

## **EXHIBIT G**

Page: 1	Report Date: 05/31/2005	Agency: New Castle County PD	Complaint: 32-05-066101
Reported Date and Time TUE 05/31/2005 1535	Initial Crime Report		Occurred: TUE 05/31/2005 1411 thru TUE 05/31/2005 1412
Location: cunane CIR forest ridge Newark, DE 19702 AT ENTRE LANE			
M.O. and Incident Overview: Victim reported that Suspect pointed his finger at Victim and poked him in the chest with his fingers during an argument over a racial epithet made by Suspect last week.			

Grid 050-330 Sector 34 County New Castle Domestic Related  Yes  No 4-F-14 Sent?  Yes  No Gen Broadcast Sent?  Yes  No

## Victim Information

Victim Number 001	Name COLEMAN, BRIAN T						
Type Individual	Sex Male	Race Black	Ethnic Origin Non-Hispanic	Age 32	D.O.B. 972		
Address 20 tarpon CT WILLINGBORO, NJ 08046	Resident Status Full Time	Home Telephone (609) 871-3763	Employer/School COMMUNICATIONS CONSTRUCTION GR			Work Telephone (302) 322-7972	
Reporting Person? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Victim Injured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Victim Deceased? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Officer Comments				
Injuries	Description of Injuries						

## Suspect/Defendant Information

Sequence 001	Type Suspect	SBI Number	Name DODSON, BRADLEY			Nick Name		
Sex Male	Race White	Ethnic Origin Non-Hispanic	Age 33	D.O.B. 1971	Height 6' 03"	Weight 210	Skin Tone	Eye Color Blue
Hair Color Brown	Hair Length	Hair Style	Facial Hair		Voice Speech	Teeth		Glasses
Disguise	Disguise Color(s)			Resident Status Full Time	Unusual Characteristics		Armed With Unarmed	
Address 1021 puzzletown RD DUNCANSVILLE, PA 16635	Home Telephone (302) 322-7972	Employer/School COMMUNICATIONS CONSTRUCTION GRP 700 LARKINS ST New Castle, DE 19720			Work Telephone (302) 322-7972			
Arrest Number	Suspect's Clothing Description							

## Crimes and Associated Information

Victim Number 001	Crime Seq 001	Status DE:11:0602:00A:M:	Crime Description Menacing				
Location Of Offense Construction Site		Status	No Victim cooperation 05/31/2005		Involvement	General Offense	
Suspected Hate/Bias <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No - N/A		Hate Bias Type Anti Black	Crime Code 13164E - Intimidation/Reckless Endanger/Terroristic Threat/Harassment/Other Assaults/Non-Aggravated				
Burglary Force Involved <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Weapon/Force Used Personal Weapons	Hands/Feet				
Victim Number 001	Crime Seq 002	Status DE:11:0601:00a1:M:	Crime Description Offensive Touching				
Location Of Offense Construction Site		Status	No Victim cooperation 05/31/2005		Involvement	General Offense	
Suspected Hate/Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A		Crime Code 13134E - Offensive Touching/Other Assaults/Non-Aggravated					
Burglary Force Involved <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Weapon/Force Used Personal Weapons	Hands/Feet				
M.O. Information	MO Class Suspect's General Actions	MO Description POINTED FINGER					
	MO Class Type of Weapon Used	MO Description HANDS					

PENNAD 800-631-6880
**DEPOSITION EXHIBIT**  
CLEMENS-4  
9/19/07-CMV

## Victim - Suspect/Defendant Relationships

Victim - 001 COLEMAN, BRIAN T	Suspect/Defendant - 001 DODSON, BRADLEY	Victim Offender Relationship Otherwise Known
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## Witness Information

Sequence 001	Type Witness	Name MCLEAN, JOSEPH G	Sex Male	Race White	Age 46	D.O.B. 1958
Address hcl box 78 MADERA, PA 16661			Home Telephone (814) 378-5436	Employer/School COMMUNICATIONS CONSTRUCTION GR		
Sequence 003	Type Witness	Name KOCH, MICHAEL B	Sex Male	Race White	Age 36	D.O.B. 1968

Reporting Officer OFC MEYER - 25822

Supervisor Approval EUGENE J MCKENNA OJNCEJM Date 05/31/2005 1822

Page: 2	Report Date: 05/31/2005	Agency: New Castle County PD	Complaint: 32-05-066101
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Sequence  
003 Continued

## Witness Information

Address 219 wallingford AVE WALLINGFORD, PA 19086		Home Telephone (484) 368-1498	Employer/School COMMUNICATIONS CONST GROUP			Work Telephone
Sequence	Type	Name	Sex	Race	Age	D.O.B.
005	Witness	KRAKOWSKI, FRANK	Male	White	46	958

Address rd 1 box 229 ROARING SPRING, PA 16673		Home Telephone (814) 224-2197	Employer/School COMMUNICATIONS CONST GROUP			Work Telephone
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## Investigative Narrative

On the above date and time I responded to the above location in reference to a possible hate crime incident. Ofc. Falkenburg responded as well and was able to interview the Victim in the incident as well as some of the witnesses. I made contact with the suspect obtaining his account of what had transpired and then met with Ofc. Falkenburg to brief same. I spoke briefly with Victim who had expressed concern over what transpired. I also spoke briefly with W-1 (Koch) who corroborated Victims account with respect to being present when Suspect made the racial statement. Due to the nature of this incident I made contact with Sgt. Gregory advising him of what we had learned which was that a racial slur was made by Suspect towards Victim last week (believed to be on Friday). Victim was advised of what had been said by Suspect and upon hearing same went to speak with Suspect about the matter. Victim had apparently just learned of the statement made by Suspect today's date as the witnesses to same did not say anything on Friday. Victim had concerns over going to the manager as the manager for the site is the suspects' brother. Victim advised that the incident turned into an argument and that Suspect had poked him in the chest. I contacted Deputy AG S. Walther and briefed him on what had transpired and the concerns. I was advised that the matter based upon the offense was a misdemeanor offensive touching not in our presence and therefore Victim could be given a copy to sign warrants. Deputy AG Walther advised that the hate crime status would amplify the charges from unclassified misdemeanor to a class A misdemeanor and was not an actual separate offense believing that there was a flag that could be checked to document same. Based upon the interviews conducted by Officer Falkenburg and myself one offense of menacing was added to this complaint. I made contact with Sgt. Gregory advising him of the conversation with Dep. Ag Walther at which time he contacted Lt. McGowan briefing him on same.

I made contact with PC Fender who is the site manager and educated him on future issues as well as the actions we would be taking todays date. Victim was provided with the complaint information and referred to Jp court to sign warrants. Based upon the investigation it was learned that this incident stemmed from a statement made by Suspect last week which was racial in nature therefore making same a potential hate crime and documented as such. No further action taken by this officer reference this incident at this time. For additional refer to Officer Falkenburg's supplement as interviews were conducted by same and the exact nature of the statement was relayed to him and then told to me.

## Statement of Suspect 001 - BRADLEY DODSON

Bradley advised that Brian and Jason approached him while he was on the hill drilling. He advised that some guy told them that he called them a nigger. He advised that he supposedly said it last week. (He did not admit or deny making the statement at this time). He advised that they first went to Frank and then to him. He advised that they were yelling at him asking him what he said and claimed that Brian was in his face screaming. He advised that he told them he did not know what they were talking about and called a supervisor at which time he was shaking his finger. He claimed that Brian told him not to point at him however he did so at which time Brian approached him still upset. He advised that he poked Brian in the chest 2-3 times with his fingers at which time Brian poked him back claiming that he should not have done same. He detailed the incident a little better advising that he was up on the hill drilling when Brian came up on a Kubota. He advised that they started yelling at Frank about what they were saying calling them Niggers. He advised that he had no idea what they were talking about and then got on the phone calling Dave (Manager to come over right away. He called Mike the field supervisor and while he was doing so Brian was in front of him with Jason there as well. Brian was making some kind of statement in reference to his hands being lethal. Brian told him not to point his finger at him, however he continued to do so at which point Mike came at him. He poked Brian in the chest with his fingers 2-3 times in the chest adding that he probably should not have done that, however Brian then poked him back.

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## Statement of Suspect 001 - BRADLEY DODSON - Continued

He understood that warrants could be signed for his arrest by Victim and that there were subjects present who heard him make the statement.

Reporting Officer OFC MEYER - 2582 2		Supervisor Approval EUGENE J MCKENNA OJNCEJM Date 05/31/2005 1822			
Detective Notified	Referred To				
Solvability Factors	<input type="checkbox"/> Witness <input type="checkbox"/> Suspect Located	<input type="checkbox"/> M. O. <input type="checkbox"/> Suspect Described	<input type="checkbox"/> Trace Stolen Property <input type="checkbox"/> Suspect Identified	<input type="checkbox"/> Suspect Named <input type="checkbox"/> Suspect Vehicle Identified	Status Has Follow Up

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JASON MCLEAN and	)	
BRIAN COLEMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No.: 06-617-SLR
	)	
COMMUNICATIONS	)	JURY TRIAL DEMANDED
CONSTRUCTION GROUP, LLC.,	)	
	)	
Defendant.	)	

**CERTIFICATE OF MAILING**

I certify that on this 2nd day of January 2008, I served electronically the attached Plaintiffs' Reply Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment on the following parties:

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